

Terminal Learning Objective

Action: Perform Notarial Services

Conditions: You are a Noncommissioned Officer-in-Charge (NCOIC) or Legal NCO working in an Army legal assistance office. In accordance with AR 27-1, AR 27-3, and AR 27-55, you must identify and understand what notarial services you are legally authorized to perform and how to accurately perform these functions.

Standards: In accordance with AR 27-1, AR 27-3, and AR 27-55, identify and understand what notarial services you are legally authorized to perform and accurately perform these functions.

Legal Assistance

- Essential to military preparedness and readiness
- Directly aids the Army successfully accomplish its mission
- “Quality of Life” service that makes a difference
- Professionally rewarding to legal personnel

What is a Notary?

A notary acts as an official, unbiased witness to the identity and signature of individuals who come before the notary for some specific purpose, such as taking an oath or affirmation, or signing a legal document. The notary attests that certain formalities have been observed and followed.

What are Notarial Services?

- Administering oaths
- Taking affidavits, sworn statements, depositions, or acknowledgments
- Attesting to the authenticity of signatures
- Attesting and certifying certain classes of documents

What Does a Notary's Signature Indicate?

- That the signer personally appeared before the notary on the date and at the location indicated
- That the signer was positively identified by the notary
- That the signer acknowledged to the notary that the signature was freely made for the purposes stated in the document

Certified True Copy

- The notary attests by placing his signature and seal that the copy is a true and exact copy of the original document presented to the notary
- Notaries are not authorized to certify copies of public records, such as birth, death, or marriage certificates, available from an official source

Notarial Authority

Title 10, U.S.C. Section 1044a grants listed individuals general powers of a notary public.

Notarial Authority - Legal NCOs

- 10 USC 1044a(b)(4) and AR 27-55
- 10 USC 1044a(b)(4) grants general powers of a notary public to “all other members of the armed forces; ... who are designated by regulations of the armed forces or by statute to have those powers.”
- AR 27-55 sets forth authority of Army personnel to perform notarial services as part of official duties

State or Foreign Law

- May also provide authority for Army personnel to provide notarial services. Army personnel providing notarial services pursuant to State or foreign law are referred to as “Civil Notaries”. There are two types of Civil Notaries:
 - Army personnel who, as a result of an application, receive a commission as a public officer from a State or foreign government to perform notarial services
 - Certain Army personnel designated by office, rank, or position under State law to provide notarial services
- However, notarial authority granted by Federal statutes (e.g., 10 U.S.C. 1044a) is separate from, and additional to, any authority provided by State or foreign law

Federal Preemption Doctrine

- Federal notarial authority and AR 27-55 supersede State authority and may be exercised without geographical limitation

State Notarial Laws

- Before exercising State notarial authority, determine:
 - The State(s) where document is to be used
 - Who has authority to provide particular notarial service under laws of jurisdiction involved
 - For whom the particular notarial service may be performed under laws of jurisdiction involved
 - Whether a notary public possessing a civil notarial commission is available

Who May Notarize?

- Military Notary
 - Providing notarial services pursuant to Federal statute, including 10 USC 1044a
- Civil Notary
 - Providing notarial services pursuant to State or foreign law

Who May Notarize?

(Continued)

- Civil Notary - Two Types:
 - Apply and receive a commission from State or foreign government to perform notarial services
 - Army personnel designated by office, rank, or position under State law to provide notarial services

Military Notaries

- 10 USC 1044a and AR 27-55, para 2-2
 - All judge advocates and warrant officers with MOSC of 550A
 - NCOs, including CPLs, or legal specialists authorized by their supervising SJA, who:
 - Possess a primary MOSC of 71D
 - Serve under “immediate supervision” of a judge advocate or DA civilian attorney

Military Notaries

(Continued)

- “Immediate Supervision”
 - AR 27-55, Glossary of Terms
 - Direct guidance or management of another
 - Does not require supervisor to be present at all times when performing duties
 - Does not require performance rating relationship with supervisor
 - Must perform duty in same general location

Military Notaries

(Continued)

- NCOs (E6 or higher)
 - MOSC of 71D
 - Legal NCOs for Brigade or larger units
 - Does not have to work under immediate supervision of judge advocate or DA civilian attorney
- All DA civilian attorneys
- All adjutants

E3 and E4 Notaries

- SJA may authorize
- 71D MOSC
- May perform military notaries and obtain civil notarial commissions
- Forward certification to OTJAG, Legal Assistance Policy Division

E3 and E4 Notaries

(Continued)

- Soldier must meet all of the following conditions:
 - Possess appropriate judgment and maturity
 - Serve under immediate supervision of judge advocate or DA civilian attorney
 - Trained in notarial services
- Civil notaries must meet all requirements of AR 27-55, para 2-3c

Authorized Recipients

- Military notaries may provide notarial services for:
 - All members of US Armed Forces
 - All individuals eligible for legal assistance
 - All individuals serving with, employed by, or accompanying the Armed Forces outside US
 - All other individuals subject to UCMJ outside US

Civil Notaries

- Commanders and SJAs may authorize the following to obtain civil notarial commissions and use in official duties:
 - NCOs, including CPLs, or legal specialists
 - Authorized by supervising SJA
 - Possess 71D MOSC
 - Work under immediate supervision of judge advocate or DA civilian attorney

Civil Notaries

(Continued)

- DA civilian employees with a Grade of GS-4 or higher
- NCOs (E6 or higher)
 - Possess primary MOSC of 71D
 - Legal NCO for Brigade or larger unit
 - Not required to work under immediate supervision of judge advocate or DA civilian attorney

Prior to Authorizing Civil Notarial Commission

- Commanders or SJAs first determine:
 - Applicable State or foreign law does not preclude
 - Person possesses appropriate judgment and maturity
 - Person qualifies as notary IAW State or foreign law

Civil Notaries

- Will comply with all limitations imposed by State or foreign laws
- Appropriated funds may reimburse expenses incidental to obtaining notarial commission used in conjunction with official duties

Notarial Terminology

- Acknowledgment
- Affidavit
- Affirmation
- Certificate
- Certified Copy
- Jurat
- Notary
- Oath
- Sworn Statement
- Witnessed

Determine Requester's Identity

- Notary will determine that individual appearing before notary is person named in document to be signed

Determine Requester's Identity

(Continued)

- Notary has acceptable evidence of identity and that individual is entitled to receive notarial services, if person is:
 - Personally known to notary
 - Identified upon the oath or affirmation of a credible witness personally known to notary
 - Identified by picture identification documents, such as military ID card or driver's license

Contents of Oath and Notarial Certifications

- Signature of notary with office title is prima facie evidence that:
 - Signature is genuine;
 - Individual holds designated title; and
 - Individual is authorized to provide service
- Impressed or raised seal, although desirable, is not required
 - Seal may enhance acceptability of document

Contents of Oath and Notarial Certifications - Military Notary

- All notarial services performed under the authority of 10 USC 1044a will also be accompanied by a citation to the authority of the individual to provide the service
- QuickScribe - Notary Folder contains complete and acceptable language

Contents of Oath and Notarial Certifications

- An appropriately designed raised seal should be circular in form and mounted on a metal die suitable for impressing a raised seal on paper
- About the upper periphery of seal should appear the words, “Notary Public Authorized Under”
- About the lower periphery should appear, “10 USC 1044a”
- In center of seal should appear the word, “SEAL”

Acknowledgment

- Formal declaration or admission made by free act or deed of individual and executed before notary
- Includes a certificate or written evidence of the act of acknowledgment made by notary, as well as act itself
- Relate primarily to documents affecting land (deeds, mortgages, leases, POA to convey land)

Acknowledgment

(Continued)

- Must be made in presence of notary
- Will decline to take Acknowledgment if identification is not possible
- Ensure correct dates are properly inserted
- Changes, cross-outs, and erasures in body of Acknowledgment should be avoided
 - If unavoidable, initialed by notary wherever they appear

Acknowledgment

(Continued)

- If a signature affixed outside notary's presence, the notarial wording included on document must be followed
 - “Sworn and subscribed before me” used, document must again be signed in notary's presence
 - Such language does not appear
 - Signer verify or affirm signature
 - Notary compare signature affixed with signature made in notary's presence and on signer's ID

Acknowledgment

(Continued)

- Some States and foreign law requires witnesses in matters pertaining to real estate
 - Since the document is prepared by competent authority, notary should ensure that the proper number of witnesses attest in their presence
 - Examine to determine appropriate number
 - Use of 3 witnesses will comply with most jurisdictions
 - Name, grade, branch of service, and SSN# of each witness, typed or printed below signature of each witness

Acknowledgment

(Continued)

- Some State and foreign law require instruments conveying real or personal property to be executed under seal
 - Place, “Witness by my hand and seal” or words to that effect, immediately preceding Seller’s signature
 - Type, print, or write the word, “SEAL”, or the symbol, “LS”, after the signature will complete the sealing of the instrument

Oaths and Affirmations

- Used when taking affidavits or sworn documents
- Direct the individual taking oath or affirmation to stand and raise right hand
- Individual administering oath says, “Do you swear or affirm that the information contained in this document is the truth to the best of your knowledge and belief (so help you God)?”

Oaths and Affirmations

(Continued)

- Response should be, “I do”, or “I affirm” or similar words of assent to oath or affirmation
- After response, individual taking oath or affirmation should sign document

Certified Copies of Documents

- Certified means “true and exact” copy
- Notary may make certified copies of some original documents provided:
 - Notary determines copy is a full, true, and accurate transcription or reproduction of original
 - Notary will carefully and personally compare the copy and original or observe the copying process
 - Notary should have a stamp that reads “This is a true and exact copy of the original document”

Certified Copies of Documents

(Continued)

- Notary shall not make certified copies of public records or publicly recorded documents when a certified copy of document is available from official source other than notary
 - These public records may include court records, birth certificates, marriage certificates, death certificates, and car titles

Certified Copies of Documents

(Continued)

- Military notaries may certify copies of public records or publicly recorded documents from official source for following limited purposes:
 - Military administration (finance and personnel)
 - Federal administration where allowed by law or regulation (INS or VA)
- Must state purpose for which certified, for example, “Certified Copy for DFAS”

Prohibitions

- Individuals authorized to provide notarial services will not:
 - Notarize unsigned documents
 - Certify authenticity of public, official, registered, or court records or documents
 - Issue certified copies of public records unless specifically authorized
 - Take affidavit or acknowledgment without person signing document in their presence

Prohibitions

(Continued)

- Execute notarial certificate containing statement known by notary to be false
- Perform any action with intent to deceive (predating or postdating a document)
- Authenticate signature of individual who did not personally appear before notary at time signature affixed to document
 - Except as noted in AR 27-55, paragraph 4-3c

Prohibitions

(Continued)

- Perform notarial act or take acknowledgment when notary is a party to, or directly or pecuniarily interested in transaction
- Serve as the only witness and as notary in same transaction
- Solemnize marriages as part of official notarial duties
- Provide legal advice unless an attorney

Prohibitions

(Continued)

- Notarize General POA before determining client received advice from attorney
- Perform notarial services as RC enlisted notary in non-duty status without prior approval from supervising SJA
- Notarial authority will not be delegated to another person

Prohibitions

(Continued)

- Not perform notarial act that notary believes
 - Is for transaction notary knows or suspects is illegal, false, or deceptive
 - Is for a person being coerced
 - Is for a person, the notary has compelling doubts about whether the person knows the consequences of his/her transaction
 - Impugns or compromises notary's impartiality
 - Is prohibited by AR 27-55 and/or State law

Prohibitions

(Continued)

Military personnel and civilian employees reimbursed by U.S. Government for the costs and expenses associated with obtaining and using their civil notarial commission and seal in performance of their official duties may provide notarial services privately, as long as such services are provided without the use of Government property when they are off duty and off the installation.

No fee may be paid to, or received by, Army personnel, whether civilian or military, for providing notarial services during their duties.

Misconduct

- Cdrs/SJAs may revoke or suspend authority of any person to provide notarial services as part of official duties for failure to comply with AR 27-55 or other applicable laws regarding provision of notarial services

Misconduct

(Continued)

- Military members may be punished under UCMJ
 - Art 92, Dereliction of Duty
 - Art 107, False Official Statement
- Military and civilian personnel also subject to adverse administrative or adverse personnel action

Misconduct

(Continued)

- Military and civilian personnel also subject to personal liability, including damages, for losses suffered by others arising from their failure to perform notarial services IAW AR 27-55 and applicable laws
- Civil notaries are subject to prosecution by issuing State for misconduct

Power of Attorney

- A written instrument executed by one person, the PRINCIPAL, designating another individual, the AGENT, or “ATTORNEY-IN-FACT”, to perform specified acts on the PRINCIPAL’S behalf
- A POA notifies third parties of the AGENT’S authority

Types of POA

- General - gives broad powers and authority to the Agent
- Special - limits power or authority given to Agent to specific act(s) described in the instrument

State Recognition of Military Powers of Attorney (POA)

- 10 USC 1044b
 - Requires States to recognize military POAs
 - Military POAs given legal effect without regard to State law

State Recognition of Military Powers of Attorney (POA)

(Continued)

- 10 USC 1044b(a) - a military POA
 - is exempt from any requirements of form, substance, formality or recording that is provided for POAs under State law
 - shall be given legal effect as POA prepared and executed IAW State law

State Recognition of Military Powers of Attorney (POA)

(Continued)

- Military POA includes any general or special POA notarized IAW 10 USC 1044a or State or Federal law

Prescribed Preamble for Military POA

- 10 USC 1044b(c)
- Required to be inserted at beginning of each general and special POA

Prescribed Preamble for Military POA (Continued)

- “THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.”

Dangers of POA

- POA can be dangerous to Principal if improperly used by Agent
- Person should execute POA only when reasonable or immediate need for POA exists
- Principal must have utmost trust and confidence in Agent for General POA

Dangers of POA

(Continued)

- LA clients and POA Principals must be fully advised of inherent dangers of POA
 - AR 27-55, para 3-4a(11) prohibits notarizing General POA without first determining that client received advice from an attorney on nature and effect of General POA
 - Must counsel Principal on:
 - Dangers of executing General POA and
 - Ascertain whether Special or Limited POA would accomplish purpose

Termination or Revocation of POA

- Insert termination clause in all POAs
 - Prevent POA from being indefinite in duration and terminates it on specific date, unless sooner revoked

Termination or Revocation of POA

(Continued)

- If no specified date in POA, continues in effect until terminated by:
 - Statutory provisions for termination
 - Operation of law (death of Principal or Agent)
 - Act of Principal or Agent evidencing an intent to revoke POA

Termination or Revocation of POA

(Continued)

- An unrestricted General POA will NOT be used or produced, under any circumstances, unless it contains specific termination date or other provisions for revocation

Termination or Revocation of POA

(Continued)

- Principal must give notice of the revocation to Agent if:
 - No termination date is inserted in POA, or
 - Principal wishes to revoke POA prior to stated termination date
- Notice preferably in writing
- Agent acknowledge receipt of notice
- Takes effect when communicated to Agent

Termination or Revocation of POA

(Continued)

- Revocation takes effect as to third party dealing with Agent, when third party receives notice of revocation
 - Third parties may include businesses, financial institutions (banks), schools, medical facilities
- Some State statutes require recording of revocation

Incapacity of Principal

- In some States, POA terminates upon the incapacity of Principal
 - Notwithstanding that POA has no termination date or termination date is subsequent to date when incapacity occurs

Incapacity of Principal

(Continued)

- Durable POA
 - May remain valid and operating despite incapacity of Principal
 - Gives powers to Agent to act even during incapacity of Principal
 - Based on State Law, not Federal Law

Notarial Log

- Confirm notary services performed
- Commanders and SJAs may direct Notaries to keep
- May include:
 - Names and signatures of individuals whose signature or document notarized
 - General nature of documents
 - Dates and locations notarial services performed

Notarial Log

(Continued)

- Retained in possession of Notary
- Civil Notaries will fully comply with applicable laws of their jurisdiction requiring maintaining of logs